and the validity of the patent was quite extraneous to the case. In going out of its way to invalidate the patent the court disregards several prior decisions. In *Lowell* v. *Lewis*, 1 Mason 182, the contention was raised that the patent was invalid for lack of utility in the device. Mr. Justice Story held, however, "The word 'useful,' therefore, is incorporated into the act in contradistinction to mischievous or immoral. * * * But if the invention steers wide of these objections, whether it be more or less useful is a circumstance very material to the interest of the patentee, but of no importance to the public." *Acc., Bedford* v. *Hunt*, 1 Mason 302; *Kneass* v. *Schuylkill Bank*, 4 Wash. 9. In *Crown Cork & Seal Co.* v. *Aluminium Stopper Co.*, 108 Fed. 845, the patentee was allowed to recover damages for infringement even though the device as literally described in his patent would not work at all. The decision was placed on the ground that it took mere mechanical skill so to change it that it would work, and that the defendant, therefore, was using a device which embodied the idea covered by the plaintiff's patent. *Acc., Brunswick-Balke-Collander* v. *Backus, etc., Co.*, 153 Fed. 288. The principal case cites no authority on the point at all.

TELEGRAPHS—COMMERCE.—A contract, made in the state of Alabama for the transmission of a message from one point in the state to another point therein, routed by the telegraph company to the point of delivery by way of a relay station in the state of Georgia, *held*, an interstate transaction. *Western Union Telegraph Co.* v. *Glover* (Ala., 1920), 86 So. 154.

The Alabama court in its opinion admits that the trend of authority is contrary to its view. In fact, its holding on this point of interstate commerce, it agrees, is not necessary to its decision. Of the numerous cases on the subject, it finds but two to cite as favoring its view, and even in one of these the statement on the point is plainly *obiter*. *Telegraph Co.* v. *Taylor*, 57 Ind. App. 93, 104 N. E. 771. At first, misconceiving the doctrine of *Lehigh Valley R. Co.* v. *Penna.*, 145 U. S. 192 (involving the taxation of intrastate railways passing for a short distance into another state), some courts held that if the termini of a telegraph line were in one state a message between them was intrastate, even though the line passed in part over the territory of another state. *Railroad Commissioners* v. *Telegraph Co.*, 113 N. C. 213; *Telegraph Co.* v. *Reynolds*, 100 Va. 459. Then came the decision in *Hanley* v. *Kansas City So. R. Co.*, 187 U. S. 617, which restricted the doctrine of the *Lehigh Valley* case, and, in 1910, the amendment by Congress of the Interstate Commerce Act of 1887 so as to place interstate telegrams under the control of Congress on the same footing with the business of other common carriers. Most states then turned to the interstate commerce view. *Telegraph Co.* v. *Bolling*, 120 Va. 413; *Telegraph Co.* v. *Lee*, 174 Ky. 210, Ann. Cas. 1918-C, 1026 and 1036, notes; *Klippel* v. *Telegraph Co.* (Kan., 1920), 186 Pac. 993; L. R. A. 1918-A, 807. The United States Supreme Court in a most recent case held contrary to the decision in the principal case, even though it was found that the message there was sent out of one state into another for the purpose of evading liability under the law of the

former. *Telegraph Co.* v. *Speight* (1920), — Sup. Ct. Rep. —. In *Watson* v. *Telegraph Co.* (N C., 1919), 101 S. E. 81, the court held that a message like that in the instant case was not interstate, where the mode of transmission was not the usual and customary one, but was adopted to evade state laws. As a curb on fraud this view may be desirable. As a practical matter we must consider facts, not motives. *Telegraph Co.* v. *Mahone,* 120 Va. 422. The fact must be tested by the actual transaction, and the transmission of a message through two states is actually interstate commerce. *Kirkmeyer* v. *State of Kansas,* 236 U. S. 568, 59 L. Ed. 721. From the beginning state courts, jealous of the power of their own commonwealths, have naturally leaned towards the intrastate view. While the United States Supreme Court, as naturally, is inclined to enlarge the scope of federal authority. The general tendency of the last ten years has been to enlarge federal control in these fields. See in this connection 16 MICH. L. REV. 379.

TRIAL—COERCION OF JURY REVERSIBLE ERROR.—In a prosecution for violation of the Prohibition Act, the jury reported that they were unable to agree. The court instructed the jurymen that, should they be unable to arrive at a verdict, it would be necessary for the court to discharge them for the remainder of the term. On appeal of the defendant from the conviction, it was *held,* that such an instruction made for the purpose of coercing a jury is reversible error. *People* v. *Strzempkowski* (Mich., 1920), 178 N. W. 771.

The court may properly urge upon the jury the necessity of their coming to a verdict. *Pierce* v. *Rehfuss,* 35 Mich. 53; *White* v. *Calder,* 35 N. Y. 183. As a reason for this necessity, the court may advance the expense to the state of a retrial, *Kelly et al.* v. *Doremus et al.,* 75 Mich. 147 (but see *Railway Co.* v. *Bazber* (Tex.), 209 S. W. 394, 17 MICH. L. REV. 607); or the expense to the parties, *Pierce* v. *Rehfuss, supra;* or the length of time expended on the case at the present trial, *Shely* v. *Shely,* 20 Ky. Law Rep. 1021; *Knickerbocker Ice Co.* v. *Penn. R. Co.,* 253 Pa. 54. But it is not proper to coerce the jury to arrive at a verdict, either by threatening to keep them without food, *Hancock* v. *Elam,* 62 Tenn. 33; or suggesting the incompetence of the minority of the jury, *Twiss* v. *Lehigh Valley Ry. Co.,* 61 N. Y. App. Div. 286; or by threat to discharge. *People* v. *Strzempkowski, supra.* The line of demarcation seems to be between using reasonable means to urge the jury to arrive at a verdict, *White* v. *Fulton,* 68 Ga. 511, and threats for the purpose of coercing them, *Hancock* v. *Elam, supra.* However, it is possible that the court, in the principal case, misconceived the anxiety which a jury might have on being threatened with discharge for the remainder of the term.

TROVER AND CONVERSION—MEASURE OF DAMAGES FOR CONVERSION OF TIMBER.—Trees were unlawfully, but not willfully, cut, and the cut timber converted. *Held,* the measure of recovery in trover is the value of the timber at the time and place of conversion, with interest, with no deductions for labor performed upon the timber anterior to the consummation of the conversion by actual removal. *West Yellow Pine Co.* v. *Stephens* (Fla., 1920), 86 So. 241.